

1982 S.C. Op. Att. Gen. 60 (S.C.A.G.), 1982 S.C. Op. Att. Gen. No. 82-55, 1982 WL 155024

Office of the Attorney General

State of South Carolina

Opinion No. 82-55

August 18, 1982

***1 SUBJECT: Courts—Probation and Parole—Support**

Family Courts in this State are not empowered to place a support contemnor on probation under the supervision of an adult criminal probation officer.

TO: Chief Judge
Family Court
Fifteenth Judicial Circuit

QUESTION:

Do the Family Courts in this State have the authority to place support contemnors on probation supervised by adult criminal probation officers?

DISCUSSION:

You have inquired as to whether certain provisions of the new Children's Code, which were carried forward from earlier enactments setting forth the authority of the Family Courts of this State, empower these Courts to place a person on probation under the supervision of an adult probation officer. The particular provisions to which you referred relate to the placing on 'probation' of a violator of a support order, specifically [Sections 20-7-420\(23 & 24\)](#), [20-7-880](#), [20-7-900](#), [20-7-930](#) and [20-7-940](#), [Code of Laws of South Carolina \(1976\)](#), as amended.

[Section 20-7-420\(23\)](#) states that the Family Court has exclusive jurisdiction ' . . . to suspend sentence and place on probation a person who has failed to support another as required by law, and to determine the conditions of such probation and require them to be observed; to revoke such suspension of sentence and probation, where circumstances warrant it; and to discharge a respondent from probation.' Subsection (24) of this same provision extends this jurisdiction to allow the court 'to release on probation prior to the expiration of the full term a person committed to jail for failure to obey an order of the court, where the court is satisfied that the best interest of the family and the community will be served.' [Sections 20-7-880](#) and 900 provide a procedure under which a person under probation can be arrested for violating the conditions of his probation. [Sections 20-7-930](#) and 940 are provisions similar to 20-7-420(23) in that they grant to the Court the authority to issue an order placing a violator of a support order on probation and revoke that probation where circumstances warrant it.

From the context in which the term 'probation' is used in these statutory provisions, it is clear that the authority of the Family Court to place a person on 'probation' is limited only to those situations wherein a parent has been placed under a support order, he has failed to comply with that order, and has, consequently, been brought before the Court in a supplemental enforcement proceeding for civil contempt. The Court would then use these provisions as a remedial, not punitive, means of enforcing its original order. If the individual was found to be in contempt and a jail sentence was imposed under [Section 20-7-1350 of the Code](#), the contemnor would be allowed to purge himself of this contempt and avoid serving his sentence by complying with certain probationary conditions designed to insure compliance with the previously issued support order, such as paying the

arrearage under the order and making all future payments in a timely manner. What is actually allowed by these provisions is a conditional sentence similar to the one imposed in the recent case of [Curlee vs. Howle](#), 277 S.C. 377, 287 S.E.2d 915 (1982).

*2 In [Curlee](#), the appellant had been brought before the Greenville County Family Court on a Rule to Show Cause for violating provisions of a child custody order. As a result of the appellant's violations, the respondent had incurred expenses in excess of \$12,000 to obtain a return of lawful custody of her children. The Court found the appellant in contempt, sentenced had to one year imprisonment, but provided that he be allowed to purge himself of the contempt by paying the expenses incurred by the respondent. The issue on appeal was whether the Court had the authority to issue such an excessive sentence without a jury trial. In examining the sentence, the Supreme Court correctly characterized the action as one for civil contempt, not criminal contempt, its purpose being 'to compel appellant to pay the expenses, not for punishment.' Therefore, the Court concluded '[t]he conditional nature of the imprisonment, based entirely upon appellant's refusal to pay respondent's expenses, justified the civil contempt proceeding without a jury trial.' 287 S.E.2d at 919.

The distinction made by the Court in [Curlee](#) between civil contempt, for which a conditional sentence is imposed to compel compliance with a court order, and criminal contempt is significant because, if the action of the Court had been of a criminal character, the appellant would have been entitled to the constitutional rights of a person charged with a criminal offense, including the right to a jury trial. 287 S.E.2d at 918. Similarly, if the authority granted to the Family Courts by the statutory provisions which you have cited allowing for the placement of support contemnors on 'probation' are construed to mean that the Court may also require this 'probation' be supervised by criminal probation officers, the Court's action takes on a character more closely related to criminal contempt, thus entitling the contemnor to such rights. It is very unlikely that the Legislature intended such a construction. First of all, there is no provision in any of the acts creating and relating to the Family Court system which gives the Court the ability to hold a jury trial. See 1968 [Acts and Joint Resolutions](#), No. 1195; 1976 [Acts and Joint Resolutions](#), No. 690; 1981 [Acts and Joint Resolutions](#), No. 71. Secondly, none of the provisions mentioning the authority of the Courts to place a contemnor on conditional 'probation' state that the contemnor's compliance with the conditions should be supervised by probation officers. Third, [Section 24-21-410, Code of Laws of South Carolina \(1976\)](#), as amended, which is the provision under the Probation Act specifying the kinds of cases to which a 'probation officer' is assigned, provides that 'after conviction or plea for any offense, . . . , the judge of any court of record with criminal jurisdiction may suspend the imposition or the execution of a sentence and place the defendant on probation . . .' (emphasis added). This provision would not include a civil contempt citation in the Family Court because that Court is not a Court with criminal jurisdiction and a citation for civil contempt is not an 'offense'. See 29 [Words and Phrases](#), 'Offense,' 1981 Cumulative Annual Pocket Part at 29, citing [Duval vs. Duval](#), 114 N.H. 422, 322 A.2d 1 (1974).

CONCLUSION:

*3 In view of the foregoing, it is the opinion of this office that the Family Courts of this State are not empowered to place a support contemnor on probation under the supervision of an adult criminal probation officer.

Raymond G. Halford
Deputy Attorney General

1982 S.C. Op. Atty. Gen. 60 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-55, 1982 WL 155024